

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2493 of 2006

Commissioner of Income Tax
Chennai.

Appellant/Appellant

Vs.

M/s.Premier Tobacco Packers
(P) Ltd., C-2B, Pioneer Homes,
115A, Sir P.S.Sivaswamy Salai,
Mylapore, Chennai-4.

Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 28.4.2006 in ITA No.630/Mds/2001 for the assessment year 1996-97 against the order of the Commissioner of Income Tax (Appeals) XIII Chennai dated 9.2.2001 and made in ITA.No.209/98-99 against the order of the Joint Commissioner of Income Ta, Special Range VII, Chennai-34 dated 28.1.1999 and made in PAN/GIR.No.AAACP.4232G.

For Appellant : Mr.T.Ravi Kumar

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.630/Mds/2001 dated 28.4.2006 for the assessment year 1996-97.

2. The Revenue is the appellant. The issues raised in this appeal relate to the assessment year 1996-97. The Assessing Officer, on completing the assessment, disallowed the claim of the assessee in respect of replacement expenditure of electrical motors and treated the same as capital expenditure. Aggrieved, the assessee went on appeal and the Commissioner of Income-tax (Appeals) allowed the appeal. The Revenue took up the issue before the appellate Tribunal

and the Tribunal also held the issue in favour of the assessee. Hence, this appeal by the Revenue raising the following questions of law:-

"1. Whether in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as revenue expenditure ?

2. Whether in the facts and circumstances of the case, replacement of independent complete machinery can be treated as revenue expenditure ?

3. Whether in the facts and circumstances of the case, the Tribunal was right in deciding the issue without going into the concept of Block of asset ?"

3. With regard to question Nos.1 and 2, the question whether the expenditure on replacement of machinery is capital or revenue is not determined by the treatment given in the books of account or in the balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. In the instant case, the Commissioner and the Appellate Tribunal, finding that replacement of machinery is revenue expenditure, held that the claim of the assessee cannot be disallowed.

4. This Court, in COMMISSIONER OF INCOME-TAX v. JANAKIRAM MILLS LTD. (2005) (275 ITR 403), held that all plant and machinery put together amounts to a complete spinning mill which is capable of manufacturing yarn and hence, each replaced machine could not be considered as an independent one and no intermediate marketable product was produced.

5. In view of the ratio laid down by this Court in the decision cited supra, we hold that the expenditure on replacement of machinery is revenue expenditure and therefore, the Tribunal was right in allowing the claim of the assessee.

6. With regard to question No.3, this Court, in the decision cited supra, explained the principle or object of introducing the concept of 'Block of Assets' in detail. It is apposite to refer the following:

"Regarding the argument relating to "block of assets", it is the claim of learned counsel for the assessee that the said principle or object of introduction of the above concept is totally not applicable relating to the nature of

expenditure incurred by the respondent. These provisions were introduced from April 2, 1987, as defined under section 2(11) of the Income-tax Act, 1961 and they are in operation on different field. It is stated that they were intended to replace the provisions on depreciation of capital assets. The block of assets concept was introduced with a view to streamline the excess depreciation allowed and to allow terminal depreciation. When the block of assets concept was introduced, the provisions relating to terminal depreciation and the profit result from the sale of assets, which were originally considered under sections 32(1)(iii) and 41(2), were suitably amended to fall in line with the proposed simplification of the concept of block of assets. The circular describing the concept of block of assets is explained by the Central Board of Direct Taxes by Circular No. 469 dated September 23, 1996 reported in [1986] 162 ITR (St.) 21, 24. In the instant case, no acquisition of any new asset, much less capital of any enduring advantage resulted to the assessee-respondent. The assessee replaced the worn out part of machineries without discontinuing their production activities. No claim for depreciation was ever made before any authorities either by the assessee or by the Revenue to consider the question as block of assets nor was there any necessity to do so. The Department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of the block of assets concept. It is, therefore, stated that such question does not arise out of the order of the Appellate Tribunal for considering the same by this court under section 260A."

7. In the instant case also, the assessee had only replaced the electrical motors without discontinuing their production activities and that there was no acquisition of any new asset, much less capital of any enduring advantage. A perusal of the orders of the authorities below shows that no claim for depreciation was ever made before any authorities either by the assessee or by the Revenue to consider the question of block of assets nor was there any necessity to do so. Moreover, the Department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of the block of assets concept. Therefore, applying the law laid down by the decision cited supra, such question does not arise out of the order of the Appellate Tribunal for considering the same by this court under section 260A of the Act.

8. In view of the above, we find no error or illegality in the order of the Tribunal and the same requires no interference. Hence, no substantial question of law would arise for consideration of this Court. Accordingly, the tax case appeal is dismissed.

sra

Sd/
Asst.Registrar

/true copy/

To Sub Asst.Registrar

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "B", III Floor,
Rajaji Bhavan, Besant Nagar, Chennai-90.

2.The Commissioner of Income-
Tax (Appeals), Chennai.

3.The Joint Commissioner
of Income-tax, Special Range-VII,
Chennai.

4.The Commissioner of Income Tax,
Chennai.

1 cc to Mrs.Pushya Sitaraman, Senior Standing Counsel for IT,
SR.52883

ng (co)

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